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Supreme Court of the United States

..... Term, 1948.

No. 588

I. H. SPEARS,

Petitioner,

vs.

EVA MAE SPEARS, and GEORGE A. SUTTON,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, SIXTH CIRCUIT.

I. H. SPEARS,
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is a member

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Summary Statement of Matter Involved.

This cause challenges the validity and correctness under the Constitution and laws of the United States, the judgment entered in this cause by the Court of Appeals for the Sixth Circuit on the 7th day of December 1948 (Tr. 3 pages following page 31), as being a denial of petitioner's rights, privileges, and immunities guaranteed to citizens of the United States; and a denial to petitioner of his civil rights, and a deprivation of petitioner's rights, property, privileges, and immunities, guaranteed to citizens of the United

States, in violation of the Constitution and laws guaranteeing due process of law, and the equal protection of the law as provided by Article III, Section 2 Const. U. S., Judicial Code, 8 USCA Sections 41, 43, and 47(3), Judicial Code 28 USCA Section 41(1), 41(12) and 41(14) (Tr. 1-5, 10-15) Amendment to the Constitution of the United States, Fifth (Art. V), Amend. Const. Art. VII, and Amend. Art. XIV.

This suit originated on complaint brought by petitioner, a citizen of the state of California for damages in the sum of $125,000.00 for libel and slander, against respondents. Respondents are citizens of the state of Michigan. The complaint contains five separate charges; respondents filed motion to dismiss, and the District Court sustained said motion as to one count only and overruled the motion as to the other four counts; petitioner amended, and respondents filed separate answers, and petitioner filed replies and demanded a jury trial, and thereafter respondents filed motion for summary judgment of "No cause of action", petitioner filed affidavit in opposition thereto, also filed motion for summary judgment, or judgment on the pleadings with supporting affidavits (Tr. 1-5, 10-15, 6-9, 29, 15-19, 20-21, 22-25).

The District Court entered summary judgment for respondents (Tr. 25, 26) and the cause was appealed to the Court of Appeals Sixth Circuit; and on the 7th day of December, 1948, the Court of Appeals for the Sixth Circuit entered judgment affirming the judgment of the District Court (Tr. 3 pages following page 31).

This is a petition for writ of certiorari to review the judgment of the Court of Appeals for the Sixth Circuit (Sec. 240 (a), Judicial Code as Amended).

Reasons Relied Upon for the Allowance of the Writ.

This case presents questions of first importance—the constitutionality of the authority and power exercised by the Court of Appeals Sixth Circuit, denying petitioner his right of property, privileges, and immunities guaranteed to him as a citizen of the United States by the Constitution and laws of the United States. Strander v. West Virginia, 100 U. S. 103.

The Judgment of the Court of Appeals Sixth Circuit denies petitioner his right of trial by jury.

Const. Amend. VII, Livingston v. Moore, 32 U. S. 469;
Pearson v. Yewdall, 95 U. S. 294;
Bank of Columbia v. Okley, 17 U. S. 235.

Aside from the novelty and importance of the issues presented, the decision below should be reviewed for the additional reason that it is clearly erroneous and not in accord with the principles of the decision of *this court* in *White v. Nicholl, et al.*, 44 U. S. 266, and is not in accord with decisions of other Courts of Appeals in the following cases:

Anonymous v. Trenkman, 48 Fed. 2nd. 571;
Potter v. Troy, 175 Fed. 129;
Massee v. Williams, 207 Fed. 231;
Harlow v. Carroll, 6 App. D. C. 138;
In Re Thatcher, 190 Fed. 982;
King v. McKissick, 126 Fed. 215;
Thackeray v. Petterson, 157 Fed. 2nd. 614;
Furton v. City of Manasha, 149 F. 2nd. 945, 326 U. S. 771, 90 L. Ed. 466;
Burley v. Elgin, 326 U. S. 711; 89 L. Ed. 1886;
Rogers v. Girard Trust Co., 159 F. 2nd. 239;
Dupont Engineering Co. v. Nashville Ba. Pub. Co., 13 F. 2—186.

Questions Presented:

1: UNDER Art. III, Sec. 2, Const. U. S., and Judicial Code, 8 USCA Sec. 41, 43, and 47(3), Judicial Code, 28 USCA 41(1), 41(12), and 41(14), and U. S. Const. Amend. VII, and 14th Amend. Const., did the District and Court of Appeals for the Sixth Circuit by denying respondents' motion to dismiss hold plaintiff's complaint stated a cause of action, and did this judgment become the law of this case?

2: Under the Constitution and laws above mentioned, did the filing of answers and replies and demand for jury in this cause constitute a cause for trial by jury, and did the judgment of the Court of Appeals deprive petitioner of his rights, privileges, and immunities, and due process of law and the equal protection of the law as guaranteed by the Constitution and laws of the United States to its citizens.

3: In libel and slander suits, are libelous statements, not material or relevant to the issues in the proceeding in which used, and made without cause, and actuated by malice, actionable, and may petitioner maintain an action for damages, therefor under the Constitution and laws of the United States?

3-(a): Petitioner stated a cause of action or claim against respondents, and this cause should have been submitted to a jury, and the judgment of the Court of Appeals was error for review of the Supreme Court.

In the interest of brevity petitioner here refers to and incorporates in this petition all of the matters presented

in his designation of record on appeal, and point to be urged on appeal to the Court of Appeals Sixth Circuit (Tr. 27, 28, and 29), with the same force and effect as if herein set out in full.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Court of Appeals for the Sixth Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a transcript of the record and proceedings herein; and that the decree of the United States Court of Appeals for the Sixth Circuit be reversed by this Honorable Court, and your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

I. H. SPEARS, *Petitioner*,
73 W. Bellevue Dr.,
Pasadena 2, California.

State of California,
County of Los Angeles. } ss.:

I. H. SPEARS being duly sworn, on oath says, the allegations and statements in the foregoing petition are true.

I. H. SPEARS.

Subscribed and sworn to before me
this 7 day of February, 1949.
John N. McKenna,
Notary Public in and for
(Seal) Los Angeles County, California.